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COURT OF APPEALS
DIVISION II
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STATE OF WASHINGTON
BY _____
DEPUTY

Case No. 53085-6-II

Case No. 18-2-04583-1

BIIA Case No. 1515614, 1515614-A

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION II

KENNETH LEE.

Appellant,

Vs.

BOEING CO & DEPARTMENT OF LABOR & INDUSTRIES.

Defendant,

APPELLANTS OPENING BRIEF

Hearing dates: 10-25,29,30; 11-1,2, 2018

Trial Court Judge: Susan K. Serko

Kenneth Lee, PRO SE

Names of attorneys at trial: Boeing Co., Jennifer Kramer, Department of
Labor & Industries, AAG Lucretia Greer

Court Reporter: Lanre Adebayo,

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ARGUMENTS

- A. The purpose of the Industrial insurance act is to be liberally construed in Favor of injured Workers, such as Mr. Lee (Text of Statute, rule, jury instructions, or the like)
- B. I request that I be granted permanent disability. Dr. J. Daniel Wanwig reiterated that I am permanently disabled and agrees that it resulted from the industrial injury that occurred while working for The Boeing Company. Dr. Thomas Young agrees as well that I Kenneth Lee am permanently disabled. (See CP). Dr. Wanwig testified under oath on November 23, 2016 I am permanently disabled and reiterated on September 26, 2018 that he still agrees to this (EXIBIT 4).

- C. On numerous occasions Judge Susan K. Serko denied redactions to be removed from rulings on evidence (Pg. 5 Box 15 CP) that Mr. Lee requested. For example, On January 19, 2017 pg. 35 of Doctor Matthew Drakes testimony, Line 20-22 says By Ms. Greer: At the time, Dr. Drake was active duty, he was testifying from the Middle East, and did not go through 16 years of chart notes with him. This is not true. Dr. Drake testified on August 3, 2016 in Washington D.C. (See Testimony of Dr. Drake dated August 3, 2016). (CP)
- D. Judge Serko informed the other parties to serve Mr. Lee properly and to give enough time between court days to be able to file and answer and not serve Mr. Lee on the day of court. (Text of Statute or rule)
- E. I brought it to Judge Serko's attention that the Boeing attorney Jennifer Kramer and the Department of labor & Industries AAG Lucretia Greer were changing dates and words on certified testimonies. I believe this is Fraud and Forgery (Unpublished opinion)
- F. Such as, Aaron Hunt's testimony date November 1, 2014 Pg.120 line 5 (see EX 1). This is one that was found. I am unsure as to if there were more documents altered by the Boeing and L&I attorneys.
- G. Judge Susan K. Serko stated we were to only read from the testimony, nothing will be added. (Reference to Record)

- H. Boeings attorney and the AAG for L&I put in exhibits that they denied in the lower courts, that were Mr. Lee's (Reference to Record)
- I. Mr. Lee filed an appeal in the superior court before Jennifer Kramer filed. Yet they took Ms. Kramer's and consolidated both parties in one. Using Ms. Kramer's case number. 18-2-04583-1 (See CP).
- J. Judge Susan K. Serko had a conflict of interest in my case. Judge Serko had just been involved in the rulings of DR. Paul Nutter who was my personal physician from 2003 to July 15th, 2014. I motioned to disqualify her as my cases judge on 10-12-2018 and she refused to step down. (CP)
- K. On Mr. Lees filing case number 18-2-04315-3(See CP). Mr. Lee was the plaintiff and the Boeing Company and L&I were defendants. (Reference to Record)
- L. Jennifer Kramer's case number 18-2-04583-1, she filed the Boeing Company as plaintiff, and she moved the L&I attorney to the position with Mr. Lee as defendants. 3. L&I AAG Lucretia Greer has never sided with Ken Lee as a defendant. She was more in the plaintiff position. (see closing arguments, R.P, CP).

M. Mr. Lee is to be taken as he or she is with all his or her preexisting frailties and bodily infirmities. WENDT v. DEPARTMENT OF LABOR & INDUS., 18Wn. App 674,682-83, 571 P.2d 229 (1977)

N. Dr. Wanwig's testimony is also supported by the fact that it has been repeatedly recognized in a long line of cases that where a sudden injury lights up a quiescent infirmity or weakened physical condition occasioned by disease, the resulting disability is attributable to the injury and compensation is awardable. E.G., HARBOR PLYWOOD CORP. v DEPARTMENT OF LABOR & INDUS., 48 Wn.2d 553, 295 P.2d 310 (1956); RAY v DEPARTMENT OF LABOR & INDUS., 177 Wash. 687, 33 P.2d 375 (1934)

O. The injury itself resulted in a permanent impairment which interferes with his ability to enjoy the activities he enjoyed prior to the accident. Mr. Lee has also experienced pain and suffering associated with his injury, Bipolar Disorder, CRPS. It has been recognized that benefits are not limited to those workers previously in perfect health. GROFF v DEPARTMENT OF LABOR & INDUS., 65 Wn.2d 35, 44, 395 P.2d 622 (1964); KALLOS v DEPARTMENT OF LABOR & INDUS., 46 Wn.2d 26,30,278 P.2d 393 (1955) JACOBSON v DEPARTMENT OF LABOR & INDUS., 37

Wn.2d 444 448, 224 P.2d 338 (1950) MILLER v DEPARTMENT OF
LABOR & INDUS., 200 Wash. 674,682-83, 94 P.2d 764 (1939)

P. Mr. Lee's Occupational condition are the major contributing cause of need
for treatment or disability. TAMMY L. FOSTER, 52 an Natta 178 (2000),
BROWN v A-DEC, INC, 154 Or App 244 (1996) (reference to record)

Q. In Washington, if a specific workplace incident or occupational exposure
to distinctive conditions of employment lights-up or renders symptomatic
a previous latent, quiescent or otherwise asymptomatic condition, then the
resulting disability is attributable to the industrial injury or occupational
disease. The "lighting-up doctrine" commands that the entire disability is
charged against the claim and no portion of the pre-existing asymptomatic
condition may be segregated and apportioned from a resulting award for
permanent partial disability. MILLER v DEPARTMENT OF LABOR
AND IDUS, 200 Wn. 675 (1939) (Text of Statute or Rule)

TABLE OF AUTHORITIES

CASES

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STATUTES

RCW 51.32.080.....

RCW 51.08.100

RCW 51.08.140.....

COURT RULES

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OTHER RULES AND REGULATIONS

WAC 296-20-01002.....

I. INTRODUCTION

Comes now the Appellant, Kenneth Lee, and hereby offers this brief in support of his appeal.

This case originates under RCW Title 51, the Industrial Insurance Act, from an Administrative Law Review, appeal from a December 11, 2017 Decision and Order of the Board of Industrial Insurance Appeal. The Appeal Board REVERSED AND REMANDED the March 20, 2015 department order. Which reads (we disagree with our industrial appeals judge that the department and employer established that Mr. Lee was able to work from February 5, 2003, through July 15, 2014, and find that they failed to establish willful misrepresentation by clear, cogent, and convincing evidence.

Mr. Lee filed an appeal in superior court on approximately January 2, 2018 cause number 18-2-04315-3 and on January 10, 2018 Boeings attorney Jennifer Kramer filed an appeal. On her appeal she moved the department of Labor & Industries AAG Lucretia Greer to the defendant position, while in the beginning of the case she was in the position of Plaintiff with Boeing. This was done without my knowledge. This can be shown in the Report of Proceedings from page 65-77. Where the AAG Lucretia Greer was acting as a prosecutor and/or a plaintiff. This could cause confusion with the judge, the state of Washington, the defendant

Kenneth Lee, and the jury. Kenneth Lee did not know whether she was for or against him in this case.

Mr. Lee filed the appeal for one reason, to reinstate his disability and to clear his name of any and all wrongdoing.

II. ASSIGNMENT OF ERRORS

- A. On numerous occasions Judge Susan K. Serko denied redactions to be removed from rulings on evidence that Mr. Lee requested. For example, On January 19, 2017 pg. 35 of Doctor Matthew Drakes testimony, Line 20-22
- B. Judge Serko informed Boeings Attorney Jennifer Kramer and the AAG for L&I Lucretia Greer to serve Mr. Lee properly and to give enough time between court days to be able to file and answer and not be served on the day of court.
- C. Judge Susan K. Serko stated we were to only read from the testimony, nothing will be added. 1. Boeings attorney and the AAG for L&I put in exhibits that were denied in the lower courts. These exhibits were Kenneth Lee's and not the Boeing Company's or L&I's.

D. Did the judge error in denying Kenneth Lee's jury instructions

III. ISSUES

The Board of Industrial Insurance Appeals stated Kenneth Lee had insufficient to support his claim for temporary total disability from July 15, 2014- to present. When in fact Dr. Drake's testimony January 19, 2017 pg.10 line 11-16. Ms. Kramer questioned to Dr. Drake, if somebody has CRPS does it wax and wane or is it fairly constant in terms of their presentation of symptoms? Answer: I think its generally accepted that the symptoms can change and evolve over time. And what that time frame is not exactly specific. I believe Dr. Youngs testimony was right in his diagnostic of CRPS.

At issue was Dr. Paul Nutter under duress or being manipulated by the court, the Boeing Co.by attorney, Jennifer Kramer and the L&I AAG, Lucretia Greer. Did Dr. Paul Nutter have a stake in the outcome of the case. The reason I bring this up is that Dr. Nutter had some personal issues and could have affected his mental state. (Court issues).

IV. STATEMENT OF THE CASE

Kenneth Lee fell and injured his right arm while working for the Boeing Company on June 20, 2000. The department of industrial insurance closed the claim on July 15, 2014 and demanded repayment of time loss benefits

payed from February 5, 2003 through July 15,2014 plus a 50% penalty alleging willful misrepresentation. Mr. Lee filed a Petition for Review on June 18, 2017 (see Petition for Review 59 pgs. EX 2) after reading Judge Hansen Proposed Decision and Order dated April 12, 2017. On 12/11/2017 the three panel Judges reversed, and remanded Judge Hansen proposed decision and order saying “We disagree with our industrial appeals judge that the Department and employer established that Mr. Lee was able to work from February 5, 2003 through July 15, 2014, and find that they failed to establish willful misrepresentation by clear, cogent, and convincing evidence”. Mr. Lee filed a notice of Appeal in the Superior Court on or about January 2, 2018, On January 10, 2018 Boeings attorney Jennifer Kramer filed for a appeal, then she filed a Motion to consolidate the cases, the court consolidated the cases to Jennifer Kramer case number (18-2-04583-1). Mr. Lee’s case number (18-2-04315-3) was no good so he thought, Mr. Lee filed his appeal first and was seeking to reopen his claim. Boeing attorney Jennifer Kramer and the AAG for Labor and Industries Lucretia Greer did not want this to happen, when Jennifer Kramer filed her appeal in the Superior Court she moved the attorney for L&I Lucretia Greer to the Defendant side, I think Jennifer Kramer did this was to confuse Mr. Lee The court and the Jury. The AAG Lucretia Greer has always been on Boeing side from the beginning. I missed or left early on

somedays in court, I had to the pain was way to high for me to focus, I filed a request for accommodation by persons with disabilities and the court helped the best they could (see CP) I don't know how I lost but I did I know that the Boeing Attorney and the L&I Attorney had Redacted over 400 pages of testimony plus other redactions on the rest of the peoples testimonies

CONCLUSION

Mr. Lee respectfully requests and pray that the Appeals Court grant him a reversal for all of the Superior Court and Jury findings including all Judgments cause number 18-9-10249-0 judgment amount 821,601.01 and cause number 18-9-10250-3 judgment amount 260,800.50 and to grant him permanent disability and all back pay from July 14,2014 or return this case back to the lower court for a new trial.

Thank You for Your Time in This Matter

Dated September 3rd , 2019

Kenneth Lee

A handwritten signature in black ink, consisting of a large, stylized 'K' followed by a cursive 'L' and 'E'.

EX 4

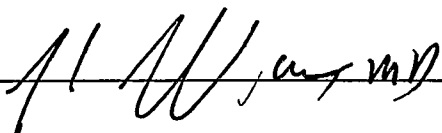
Case 18-2-04583-1

I, J. Daniel Wanwig testified under oath on November 23, 2016. I hereby stand by my testimony and reaffirm that Kenneth Lee's permanent disability and mental health condition was proximately caused by the industrial injury which precluded Mr. Lee from working from January 2, 2003, through July 15, 2014 and July 16, 2014, through March 20, 2015 and to present.

I, J. Daniel Wanwig am Kenneth Lee's mental health physician. Due to Mr. Lee's condition, he has problems concentrating, which make it difficult for him to read. He has difficulties sitting on a normal height chair or surface because of his pain disorder (CRPS), and requires an elevated height that will allow him to get up and down with less difficulties.

I, J. Daniel Wanwig base the above statement upon personal knowledge and/or professional expertise, and that the opinions therein are expressed within a reasonable degree of medical certainty, on a more probable than not basis, to the best of my abilities.

I, J. Daniel Wanwig hereby certify and declare under penalty of perjury of the laws of the State of Washington, that the above statement is true and correct.

I, J. Daniel Wanwig  MD

Date: 9/26/18

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RESPONDANT

Case No.: 53085-6-II

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CERTIFICATE OF MAILING

I certify under penalty of perjury under the laws of the state of Washington, that I
caused the documents referenced below to be served as follows: Corrected Brief

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Dated this 3rd of September 2019.

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